

REMARKS

This Application has been carefully reviewed in light of the Office Action electronically mailed on April 11, 2007 (the "Office Action"). Claims 1-44 are pending in the application. Claims 1-36 stand rejected. Per a telephone conversation between the Examiner and Chad C. Walters on September 26, 2006, Claims 37-44 are withdrawn from consideration. Applicants amend Claims 15-16 and 19-23, cancel Claims 13-14 and 17-18, and respectfully request reconsideration and favorable action in view of the following remarks.

Election/Restriction

Consistent with a telephone conversation between Examiner and Chad C. Walters on September 26, 2006, Applicant hereby elects to prosecute the invention of Group I, Claims 1-36. Claims 37-44 are withdrawn without prejudice or disclaimer.

Claim Rejections - 35 USC §102

The Office Action states that Claim 1 is rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Publication No. 2004/0247389 to Fuchs ("*Fuchs*"). Applicant respectfully traverses this rejection.

Claim 1 is directed to an underground tank shroud assembly including a shroud. The shroud includes a top region and a base region and is configured to circumferentially enclose a riser of an underground tank. The assembly also includes a shroud lid. The shroud lid is configured to cover the top region of the shroud and is coupled to the shroud at a first hinge coupling and a second hinge coupling.

The Office Action contends that each of the limitations of Claim 1 is disclosed by *Fuchs*. Applicant respectfully disagrees. *Fuchs* does not disclose, teach, or suggest a shroud configured to circumferentially enclose a riser of an underground tank. Rather, *Fuchs* discloses a "cover arrangement [that] is so constructed that it can be set in a form-fitting manner onto a channel arrangement, drainage channel, cable channel, shaft or similar structure (not shown in the drawing) that can be installed in the ground and opened." (*Fuchs*, paragraph 37).

Fuchs also fails to disclose a shroud lid coupled to the shroud at a first hinge coupling and a second hinge coupling. Rather, *Fuchs* discloses “two rotation and fixation devices, which are disposed opposite one another.” (*Fuchs*, paragraph 13, lines 3-4). Moreover, “when the cover is completely closed the hook-shaped pivot element and the pivot peg are spaced apart from one another, preferably by a distance in the range 1-5 mm. As a result, when the cover is fully in place only its feet are resting on the bearing surface of the frame.” (*Fuchs*, paragraph 25, lines 1-6 (emphasis added); Figure 1). “During the tilting movement of the cover, the hook-shaped pivot element is guided between the pivot peg and the guide bar in a form-fitting manner. (*Fuchs*, Claim 4; paragraph 16; Figure 3). Therefore, *Fuchs* does not disclose, teach, or suggest a shroud lid coupled to the shroud at a first hinge coupling and a second hinge coupling. Accordingly, Applicant respectfully requests that the rejection of Claim 1 be withdrawn.

Claim Rejections - 35 USC §103

The Office Action states that Claims 1-34 and 36 are rejected under 35 U.S.C. §103(a) as being unpatentable over German Reference No. DE 20004612 to Kewitz (“*Kewitz*”) in view of *Fuchs*.

When considering references for an obviousness rejection, references must be considered in their entirety, including portions that would lead away from the claimed invention. M.P.E.P. § 2141.02. Moreover, if the proposed combination would render the prior art invention being modified unsatisfactory for its intended purpose or would change the principle of its operation, the combination is improper and cannot support an obviousness rejection. M.P.E.P. § 2142.01.

The Office Action contends that “*Kewitz* discloses the invention except for the shroud lid having two hinge couplings.” Office Action, page 3. It further contends that, “*Fuchs* teaches a cover arrangement capable of performing as a shroud with a lid having two hinge couplings.” *Id.* As stated above, *Fuchs* does not disclose, teach, or suggest a shroud lid coupled to the shroud at a first hinge coupling and a second hinge coupling. Moreover, *Fuchs* explicitly teaches away from the use of a first and a second hinge coupling. *Fuchs* teaches that

[c]hannel devices are also known in which hinges . . . allow the cover to be pivoted to one side. A substantial disadvantage of this known channel device is that the cover cannot be detached from the frame, and hence cannot be removed. Another disadvantage

associated with the use of hinges is that hinges require a great deal of maintenance. In particular, when a channel is being used for drainage of surface water, they will inevitably become dirty and corroded to an extent that their function is impaired, and the hinge region may even become fractured.

(*Fuchs*, paragraph 7). Accordingly, the quoted paragraph of *Fuchs* would lead away from the claimed invention that includes a shroud lid coupled to the shroud at a first and a second hinge coupling.

Moreover, modifying *Kewitz* to include the “rotation and fixation devices” of *Fuchs*, (*Fuchs*, paragraph 13, lines 3-4), would change the principle of operation of *Kewitz* and cause *Kewitz* to be unsatisfactory for its intended purpose. The “rotation and fixation devices” of *Fuchs* allow “ the cover [to be] lifted up [in a direction perpendicular to the frame, without being tilted with respect to the frame], [and] the hook-shaped pivot elements of all hinge means simultaneously become disengaged from the pivot pegs.” (*Fuchs*, paragraph 15, lines 10-13).

For at least these reasons, Applicant respectfully contends that the combination of *Kewitz* and *Fuchs* is improper and does not disclose, teach, or suggest the combination of limitations of Claim 1, and therefore the rejection of Claim 1 should be withdrawn.

Applicant respectfully challenges the taking of Official Notice by the Office Action at page 4 with respect to: “that plastic shroud materials and specifically, polyethylene and polyurethane, are well known;” “that nut and bolt hinge assemblies are well known in the lid art;” and “that LPG storage is well known.” Office Action, page 4. Applicant respectfully requests that an applicable reference or affidavit pursuant to M.P.E.P. § 2144.03 be provided as documentary evidence in support of these positions.

Claims 2-12, 15-16, and 19-23 each depend, either directly or indirectly, from Claim 1 and incorporate all the limitations thereof. Therefore, Claims 2-12, 15-16, and 19-23 are each patentably distinguishable from the combination of *Kewitz* and *Fuchs* for at least the same reasons as discussed above with regard to Claim 1.

Claim 24 includes limitations generally directed to a shroud lid configured to cover the top region of the shroud, the shroud lid coupled to the shroud at a first hinge coupling and a second hinge coupling. Accordingly, Applicant contends that Claim 24 is patentably distinguishable from the combination of *Kewitz* and *Fuchs* for at least the same reasons as discussed above with regard to Claim 1.

Claims 25-34 and 36 each depend, either directly or indirectly, from Claim 24 and incorporate all the limitations thereof. Therefore, Claims 25-34 and 36 are each patentably distinguishable from the combination of *Kewitz* and *Fuchs* for at least the same reasons as discussed above with regard to Claims 1 and 24.

The Office Action states that Claim 35 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Kewitz* in view of *Fuchs* as applied to claim 24 above, and further in view of U.S. Patent No. 6,024,243 to Palazzo ("*Palazzo*").

Claim 35 depends from Claim 24 and incorporates all the limitations thereof. In rejecting Claim 35, the Office Action relies on the combination of *Kewitz* and *Fuchs* as disclosing each of the limitations of Claim 24. As discussed above, the combination of *Kewitz* and *Fuchs* is improper and does not disclose, teach, or suggest each of the limitations of Claim 24, and *Palazzo* does not cure this deficiency. Therefore, Applicant submits that Claim 35 is allowable for at least the same reasons as discussed above with regard to Claims 1 and 24.

CONCLUSION

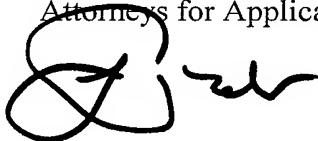
Applicant has made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for other apparent reasons, Applicant respectfully requests full allowance of all pending claims.

If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, please feel free to contact the undersigned attorney for Applicant.

Applicant believes no fee is due, however, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

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